

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MELVIN DEON GIVENS,

No. 2:19-cv-00498-HL

Petitioner,

ORDER

v.

TROY BOWSER,

Respondent.

HERNÁNDEZ, District Judge:

Magistrate Judge Hallman issued a Findings and Recommendation on March 21, 2024, in which he recommends that this Court deny Petitioner's Amended Petition for Writ of Habeas Corpus. F&R, ECF 122. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Petitioner filed timely objections to the Magistrate Judge's Findings and Recommendation. Pet. Obj., ECF 133. When any party objects to any portion of the Magistrate

Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court has carefully considered Petitioner's objections and reviewed the pertinent portions of the record *de novo* and concludes that the Findings and Recommendation should be adopted with two minor corrections.

Petitioner objects to Judge Hallman's finding that he did not explain his 20-year delay in obtaining Herlong's declaration. Pet. Obj. 14 (citing F&R 10). As Petitioner points out, Herlong stated in his declaration that he was not willing to provide it until after his own federal habeas case was over. *Id.* (citing Ex. 204 ¶ 23, ECF 90). But Judge Hallman correctly found that Herlong's declaration was not strong evidence of Petitioner's actual innocence. F&R 10-11.

Petitioner also objects to Judge Hallman's finding that a reasonable juror could conclude that Copp was killed during the immediate flight from the robbery and burglary. Pet. Obj. 3 (citing F&R 12). Petitioner correctly states that he was not charged on that theory. *Id.*; Ex. 102 at 1, ECF 29-1. But Judge Hallman correctly found that a reasonable juror could conclude that Copp was killed in the course of and in furtherance of the underlying felonies, the theory on which Petitioner was charged. F&R 12. Thus, Petitioner has not shown actual innocence.

The Court has reviewed Petitioner's other objections and concludes that they do not provide a basis to modify the Findings and Recommendation. The Court therefore adopts the Findings and Recommendation in all other respects.

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CONCLUSION

The Court adopts Magistrate Judge Hallman's Findings and Recommendation [122] as modified herein. Therefore, Petitioner's Amended Petition for Writ of Habeas Corpus [52] is DENIED.

IT IS SO ORDERED.

DATED: September 9, 2024.


MARCO A. HERNÁNDEZ
United States District Judge